



DEQ-VALLEY

MAY 16 2006

TO: _____
FILE: _____

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 Fax (540) 574-7878

www.deq.virginia.gov

Preston Bryant
Secretary of Natural Resources

David K. Paylor
Director

R. Bradley Chewning, P.E.
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT ISSUED TO

**Construction Materials Company
Trading as
ConRock - Lexington**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a), (8d), and (11) between the State Water Control Board and Construction Materials Company for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Special Order.
6. "ConRock" means the ConRock-Lexington, the owner/operator of the vehicle.
7. "Construction Materials Company" means Construction Materials Company the owner of ConRock-Lexington.
8. "Vehicle" means the ConRock-Lexington cement carrier.
9. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
10. "NOV" means Notice of Violation.
11. "Regulation" means the VPDES Permit Regulation 9 VAC 25-31-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. ConRock, owned by Construction Materials Company, is located at 9 Memorial Lane, Lexington Virginia, and owns the Vehicle. Neither ConRock nor Construction Materials Company is subject of a VPDES Permit.
2. On October 5, 2005 at 1:20 p.m., DEQ received a report from the Rockbridge County Emergency Operations Center (EOC). The Vehicle had collapsed a bridge at Irish Creek, overturned, and discharged about $\frac{3}{4}$ of a yard of concrete along with an undetermined amount of oil to Irish Creek. At approximately 3:00 p.m., DEQ personnel arrived on scene. The following observations were made:
 - A. pH readings were 8.3 upstream of the Vehicle and 9.9 downstream.
 - B. A fish kill occurred with a total of 724 dead fish observed and collected.
3. Rockbridge County EOC dispatched a team and, along with EnviroClean, conducted remediation services. The spill occurred around noon and the clean-up was completed at around 8:00 p.m. that same night.
4. On November 15, 2005 DEQ issued **NOV-05-11-VRO-001** to ConRock for waste discharges or other quality alterations of state waters without a permit. This is a violation of Section 62.1-44.5. of the Virginia Code and 9VAC25-31-50.
5. Construction Materials Company agrees to enter into an Order, this document, and pay civil charges for the unpermitted discharge and associated fish kill.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a), (8d), and (11) orders Construction Materials Company, and Construction Materials Company agrees, to perform the actions described below and in Appendix A of this Order. In addition, the Board orders Construction Materials Company, and Construction Materials Company agrees, to pay the following costs and civil penalty, as described below, within 30 days of the effective date of this Order, in settlement of the violations cited in this Order:
 - A. Pay \$88.76 to cover the replacement cost of fish killed, remitting a check payable to the Department of Game and Inland Fisheries for \$88.76.
 - B. Pay \$704.52 to cover the investigation costs of the fish kill, and pay a \$2,500.00 civil penalty, remitting one check payable to the Department of Environmental Quality for the total amount of \$3,204.52.

Please send both checks to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on each check or money order, Construction Materials Company shall indicate that this payment is submitted pursuant to this Order and shall include the Construction Materials Company Federal Identification Number.

2. Construction Materials Company shall satisfy **\$7,500.00** of the civil charge upon completing the Supplemental Environmental Project (SEP) described in Appendix A of this Order.
3. The net cost of the SEP to Construction Materials Company shall not be less than the amount set forth in paragraph D.2. If it is, Construction Materials Company shall pay the remaining amount in accordance with Paragraph D.1. of this Order, unless otherwise agreed to by the Department. "Net costs" means the costs of the project minus any tax savings, grants and first year operation cost reduction or other efficiencies.
4. By signing this order Construction Materials Company certifies that it has not commenced performance of the SEP before DEQ identified the violations contained in this Order and approved the SEP.
5. Construction Materials Company acknowledges that it is solely responsible for completing the SEP project. Any transfer of funds, tasks, or otherwise by

Construction Materials Company to a third party, shall not relieve Construction Materials Company of its responsibility to complete the SEP contained in this order.

6. In the event it publicizes the SEP or the SEP results, Construction Materials Company shall state in a prominent manner that the project is part of a settlement for an enforcement action.
7. The Department has the sole discretion to:
 - a. Authorize any alternate SEP proposed by Construction Materials Company; and
 - b. Determine whether or not the SEP, or alternate SEP, has been completed in a satisfactory manner.
8. Should the Department determine that Construction Materials Company has not completed the SEP, or alternate SEP, in a satisfactory manner, the department shall notify Construction Materials Company in writing. Within 30 days of being notified, Construction Materials Company shall pay the amount specified in Paragraph 3 above as provided in Paragraph 1 above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Construction Materials Company, for good cause shown by Construction Materials Company, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein in Section C. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Construction Materials Company admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Construction Materials Company consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Construction Materials Company declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of

fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by Construction Materials Company to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Construction Materials Company shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Construction Materials Company shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Construction Materials Company shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition above, which Construction Materials Company intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Construction Materials Company. Notwithstanding the foregoing, Construction Materials Company agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until:

- a. Construction Materials Company petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
- b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to Construction Materials Company.

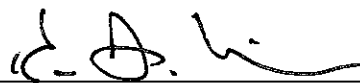
Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Construction Materials Company from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. The undersigned representative of Construction Materials Company certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Construction Materials Company to this document. Any documents to be submitted pursuant to this Order shall be submitted by a responsible official of Construction Materials Company.
13. By its signature below, Construction Materials Company voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Sept. 8, 2006.


David K. Paylor, Director
Department of Environmental Quality

Construction Materials Company agrees to the issuance of this Order.

By: 

Title: PRES.

Date: 5/8/06

Commonwealth of Virginia

City/County of Rockingham

The foregoing document was signed and acknowledged before me this

8th day of May, 2006, by Tony D. Simmons
(name)

who is President & of Construction Materials Company, on
(title)

behalf of said company.

Terry L. Whitmer
Notary Public

My commission expires: July 31, 2007

APPENDIX A

Supplemental Environmental Project

In addition to the foregoing, the Board orders Construction Materials Company to undertake, and Construction Materials Company agrees to implement, a SEP in accordance with the following terms and conditions:

1. The SEP to be performed by Construction Materials Company is to supply the South River District Volunteer Fire Department (SRD) with needed HAZMAT response items which will allow the SRD to put together their Emergency Response Plan. ConRock shall supply to DEQ a plan to accomplish supplying the following equipment:
 - a. Two (2) Aim Atmospheric, calb. Kit, pump, and adapter.
 - b. One plug and wedge kit.
 - c. One set of nitrile rubber HAZMAT gloves size large.
 - d. One set of nitrile rubber HAZMAT gloves size medium.
 - e. One 11 piece tool kit.
 - f. One Drum repair kit.
 - g. One HAZMAT response tool kit
 - h. One HAZMAT cleanup broom.
 - i. One grab and go portable spill kit.
 - j. Two (2) boxes of oil pads.
 - k. Two (2) HAZMAT pillows.
 - l. Three (3) drain covers.
 - m. Two (2) Containment pools.
 - n. Six (6) cases of wipes.
 - o. Repair putty. - \$62.00
 - p. Twenty-five (25) pairs of leather gloves.
 - q. Acid pads.
 - r. Two (2) boxes of Booms.
2. Construction Materials Company plan must include a general schedule for completion of the SEP, as well as for a report to DEQ from SRD upon arrival of the items listed in paragraph 1 above.
3. In the event that ConRock publicizes the SEP or the results of the SEP, ConRock shall state in a prominent manner that the project is part of a settlement for an enforcement action with DEQ.